

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DECLARATION OF ATTORNEY
RICHARD B. MYERS IN SUPPORT
OF PLAINTIFF’S MOTION TO
REMAND

2. I have personally spent many hours investigating wage claims against Fred Meyer Stores, Inc. As part of my investigation, I have personally spoken with more than a dozen Fred Meyer employees across four states, several of whom work at stores in Washington. I have also spoken with representatives of unions in both Oregon and Washington. My staff has also spoken with many other employees of Fred Meyer stores and relayed information to me from their telephone conversations. I have also reviewed approximately 15 news articles on the payroll

- 1

1 problem and analyzed dozens of recent paystubs.

2 3. My current understanding of the Fred Meyer payroll problem is that the wage
3 errors are widespread but the impact on the majority of the workforce in Washington is very
4 modest—an impact of no more than \$30 for most employees.

5 4. A small minority of Fred Meyer employees in Washington have been severely
6 impacted by the payroll problem. My rough estimate at this stage of investigation is that
7 approximately one to five percent of the Fred Meyer workforce in Washington have a missing
8 paycheck as result of the payroll problems. Although some missing paychecks might total \$1,500
9 or more, most of the missing paychecks I have identified amount to between \$200 and \$800.

10 5. The impact of Fred Meyer’s payroll problems has been made more severe by the
11 fact that many Fred Meyer employees are part-time and low-wage earners. Nearly every
12 employee I have spoken with lives paycheck-to-paycheck. If they are not paid wages for a pay
13 period—even in the amount of a few hundred dollars—the impact is very severe. In Oregon, for
14 example, most Fred Meyer workers earn around \$18 per hour. I know this because the average
15 wage among the largest union of Fred Meyer employees last year was \$17.29. This also matches
16 the wage rates of the many Fred Meyer employees I have spoken with in recent weeks, almost
17 all of which earn between \$16 and \$19 per hour.

18 6. According to its public comments, Fred Meyer Stores, Inc. agrees that only a very
19 small percentage of the workforce has gone unpaid due to the payroll errors. For example, a
20 spokesperson for Fred Meyer Stores, Inc. said in a press statement in November 2022 that about
21 one percent of the workforce has been affected by the payroll problems:

22 Jeffery Temple, a spokesperson for Fred Meyer, said the parent company,
23 Kroger Co., recently launched a new human resources platform that has
24 caused the problems. “Through the conversion we have experienced a
25 technical error in paycheck distribution,” the spokesperson said in a
statement. “Although a small percentage of our associates have been
affected, we understand the impact. We are working quickly on resolving
known issues.” Temple said about 1% of the roughly 40,000 Fred Meyer

employees across Oregon, Washington, Idaho and Alaska have been affected. It's unclear why around 400 employees were affected while others were not.

Kristine de Leon, *Fred Meyer Workers' Paychecks Come Up Short Due to Payroll Software Glitch*, Oregonian, Nov. 16, 2022 (attached as Exhibit 1 to this declaration and available here: <https://www.oregonlive.com/business/2022/11/payroll-glitch-leaves-some-fred-meyer-workers-paychecks-short.html>). Fred Meyer Stores, Inc. recently repeated a similar assertion when contacted by a Seattle reporter:


In a statement to KIRO 7, a Fred Meyer spokesperson confirmed that a technical error had affected payroll for some employees: "We recently launched a new associate payroll processing platform. A technical error affected payroll processing for a small percentage of our associates. We have apologized to our associates and understand the impact."

Gary Horcher, *Hundreds of Fred Meyer, QFC Employees Say They've Experienced Problems Receiving Paychecks*, KIRO 7 News, Dec. 13, 2022 (attached as Exhibit 2 to this declaration and available here: <https://www.kiro7.com/news/local/hundreds-fred-meyer-qfc-employees-say-theyve-experienced-problems-receiving-paychecks/GJ7B2MRJYRAJLO7UBNM45D7KYU/>).

7. Based on my personal investigation, I believe that Plaintiff's complaint reasonably alleges damages of less than \$5 million—even when including double damages and prospective attorney fees. My good faith estimate is that damages in this case will total between \$1 million and \$2 million.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THAT IT IS MADE FOR USE AS EVIDENCE IN COURT AND SUBJECT TO PENALTY FOR PERJURY.

DATED this 21st day of December, 2022.


Richard B. Myers, WSBA #53893

CERTIFICATE OF SERVICE

The undersigned certified under penalty of perjury under the laws of the State of Washington that on the date below indicated I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such to the following:

Attorneys for Defendant Fred Meyer Stores, Inc.

Dennis Westlind, WSBA No. 39972

BULLARD LAW

200 SW Market Street, Suite 1950

Portland, Oregon 97201

Phone: (503) 248-1134

Fax: (503) 224-8851

DATED this 21st day of December, 2022.

MENDEZ LAW GROUP, PLLC

/s/ Damian S. Mendez

Damian S. Mendez, WSBA #36157

EXHIBIT 1

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Business

Fred Meyer workers' paychecks come up short due to payroll software glitch

Updated: Nov. 16, 2022, 10:56 a.m. | Published: Nov. 15, 2022, 4:07 p.m.



About 1% of the roughly 40,000 Fred Meyer employees across Oregon, Washington, Idaho and Alaska have been affected. Sean Meagher/The Oregonian

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By Kristine de Leon | The Oregonian/OregonLive

Exhibit 1, Page 1 of 2

An update to Fred Meyer's payroll software has left some employees' paychecks short of what they're owed, some for several weeks.

Jeffery Temple, a spokesperson for Fred Meyer, said the parent company, Kroger Co., recently launched a new human resources platform that has caused the problems.

"Through the conversion we have experienced a technical error in paycheck distribution," the spokesperson said in a statement. "Although a small percentage of our associates have been affected, we understand the impact. We are working quickly on resolving known issues."

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Everyone Lc

Temple said about 1% of the roughly 40,000 Fred Meyer employees across Oregon, Washington, Idaho and Alaska have been affected. It's unclear why around 400 employees were affected while others were not.

Geoff Stewart, secretary of Teamsters Local 206 in Portland, said about 50 union employees at the Fred Meyer distribution center in Clackamas have been affected.

"We first got reports about it in the last week of September, and it's been ongoing," Stewart said. "And now we're in a situation where people are still owed a lot of money."

He said while some employees who were being shortchanged have since received their normal paychecks, they have not received back wages they're owed.

"Some of them are owed just a couple of days, and some are owed up to three to four weeks of pay," he said. "It's a huge mess."

"You gotta ask, why would one of the largest employers in the country flip a switch and go to a brand new payroll system without having a trial period in select markets?" Stewart said.

Kroger recently announced plans to acquire Albertsons, which also owns Safeway, for \$24.6 billion. The deal would combine the nation's two largest grocery chains.

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EXHIBIT 2



31°

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NEWS PINPOINT WEATHER VIDEO KIRO 7 INVESTIGATES JESSE JONES SPORTS GETS REAL COMMUNITY STEALS & DEALS



VIDEO: Unionized Fred Meyer employees facing...

employees say they've experienced problems receiving paychecks



By **KIRO 7 News Staff**

December 13, 2022 at 9:59 pm PST

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VIDEO: Unionized Fred Meyer employees facing ongoing paycheck problem

Drag to Resize Video

By **KIRO 7 News Staff**
December 13, 2022 at 9:59
pm PST

Hundreds of workers at local Fred Meyer stores are telling KIRO 7 that there's an ongoing problem with their paychecks.

Some say their paychecks are coming up short, while others say they're not getting paid at all.

Unions representing Fred Meyer and QFC workers say they've tried everything to resolve this problem and blame the rollout of a new computerized payroll program in October.

Some workers say they haven't been paid since last month and others are still waiting for the pay raises they were supposed to get in October.



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By **GLASSDOOR**

Unionized Fred Meyer workers in Oregon are suing its parent company, Kroger, in federal court over the same issues.

A grocery worker's union is now planning a campaign to petition Fred Meyer customers to contact Kroger and urge the company to fix this problem.

"One of my members, at this particular store in Tumwater, did not receive pay for five weeks and was continually working without pay," said UFCW Grocery Union representative Patty Estes. "This is completely shocking, whenever we do have a contract that is up or changes like this that are made within a company, usually they're fixed within a few weeks. I've never seen it this bad before ... especially around the holidays."

On Friday, workers from several Fred Meyer stores and one QFC store will be handing out leaflets in Pierce, Mason and Thurston counties, asking customers to help out with this issue.

In a statement to KIRO 7, a Fred Meyer spokesperson confirmed that a technical error had affected payroll for some employees:

"We recently launched a new associate payroll processing platform. A technical error affected payroll processing for a small percentage of our associates. We have apologized to our associates and understand the impact."

Hundreds of workers are still appealing to the Washington State Department of Labor & Industries for relief.

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